

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 115 of 2005
With
CIVIL APPLICATION NO.4842 OF 2005

For Approval and Signature:**HONOURABLE MR. JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the Civil
Judge?

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STATE OF GUJARAT & ORS. - Appellant(s)

Versus

GAURIBEN MANISHANKER MEHTA & ORS. - Respondent(s)

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Appearance :

SHRI L.R. PUJARI, ASST. GOVERNMENT PLEADER for Appellant(s).
SHRI P.V. HATHI for SHRI NIRZAR S. DESAI for Respondent(s).

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CORAM : HONOURABLE MR. JUSTICE R.S.GARG

Date : 11/12/2006

COMMON ORAL JUDGMENT

1. The respondents-plaintiffs, owners of land bearing Survey No.59 admeasuring 3 Acres - 27 Gunthas and

lands bearing Survey No.60 admeasuring 4 Acres – 35 Gunthas and Survey No.61/3 admeasuring 4 Acres – 18 Gunthas, were dispossessed from the said lands in view of the Notification under Section 4 and a declaration made under Section 6 of the Land Acquisition Act, 1894 (“the Act” for short).

1.1 The plaintiffs did not contest the matter at the time of acquisition and felt happy and content with the compensation awarded to them. After completion of the land acquisition proceedings, the property vested in the Government free from encumbrances and charges. After some time of the acquisition, the State Government granted the land on lease to the Gujarat Cooperative Oil Seeds Growers Federation Limited (“GROFED” for short). The plaintiffs, being aggrieved by the change of user and allotment of land in favour of the GROFED, filed Regular Civil Suit No.761 of 1987 in the Court of the learned Civil Judge (S.D.), Bhavnagar for declaration and possession.

1.2 The defendant-State appeared in the suit, filed a detailed written statement and raised various issues relating to maintainability of the suit, limitation, vesting of land in the State, etc. It was submitted that

once the land vested in the State Government free from all encumbrances, then, the State would be entitled to dispose of the land in a manner in which other properties of the State can be disposed of.

1.3 The learned trial Court, however, decreed the suit and as Regular Civil Appeal No.123 of 1995 filed by the State and others, was dismissed on 28th May, 1995 by the learned Joint District Judge (Fast Track Court No.1), Bhavnagar, the defendants-appellants are before this Court.

2. The appeal was admitted on 7th November, 2006 for hearing the parties on the following substantial questions of law:

- “1) Whether on the facts and in the circumstances of the case the suit filed by the present respondent–plaintiff was maintainable even when acquisition proceedings came to be concluded in the year 1958, the respondent had received compensation and the property vested in the State Government free from all encumbrances?*
- 2) Whether on the facts and in the circumstances of the case non-joinder of the allottee from the State of Gujarat, namely, GROFED, would be fatal to the*

maintainability of the suit?"

3. Shri Pujari, learned Assistant Government Pleader for the State, submits that the question of maintainability of the civil suit to challenge the acquisition proceedings is no more *res integra* because time and again, the Supreme Court has observed that a person would not be entitled to file a suit to challenge the acquisition proceedings. His further submission is that once the acquisition proceedings are over and the property vests in the Government free from all encumbrances, then, the erstwhile owner cannot file a suit for any relief.

4. Shri Hathi, learned Counsel for the respondents-plaintiffs, on the other hand, submitted that the plaintiffs are not challenging the correctness, legality and propriety of the notification or declaration issued under Section 4/6 of the Act, but, are submitting that the State Government is not entitled to change the user of the land and are seeking a declaration that the State is obliged to return the land back to the plaintiffs in case it is not required for the public purpose.

5. In the matter of **Commissioner, Bangalore**

Development Authority vs. K. S. Narayan, [J.T. 2006(9) S.C. 27], the Supreme Court, placing its reliance upon its earlier judgement reported in ***1995 (4) S.C.C. 229***, [***State of Bihar vs. Dhirendra Kumar***], has observed that such a suit would not be maintainable.

The Supreme Court has also relied upon a judgement in case of ***Laxmi Chand vs. Gram Panchayat, Kararia***, [J.T. 1995 (8) S.C. 195] and has observed that the plaintiffs are not entitled to seek a declaration against the validity of the acquisition.

6. If the validity of acquisition cannot be challenged by a person, who has been dispossessed in the land acquisition proceedings, then, such a person would not be entitled to challenge any action of the Government in changing the user of the land. It is not uncommon that extra land is generally acquired by the State and after the requirement is fulfilled, such extra land is put to some other use by the Government. Once notification issued under Section 4 and declaration made under Section 6 of the Act are held to be valid, then, the property would become the Government property and the erstwhile owner would not be entitled to tell the Government to exercise its discretion in a particular manner. However,

the Government would always be obliged to dispose of or allot the extra land in accordance with law and under whim, caprice or arbitrary exercise of powers of one or the other.

7. The suit filed by the present plaintiffs is, in fact, was not maintainable. The question No.1 is answered accordingly. In view of the answer to the first question, it is not necessary to decide the other question regarding non-joinder of necessary parties.

8. The appeal deserves to and is, accordingly, allowed. The judgement and decree passed by the two Courts below are held to be bad. Those are, accordingly, set aside. Interim relief, if any, granted earlier is vacated. No costs. Let the decree be framed accordingly.

9. At this stage, Shri Hathi, learned Counsel for the appellants, submits that he be given liberty to approach the appropriate authority for allotment of some land out of the lands, which were acquired from them.

10. In the opinion of this Court, such liberty is not required to be reserved because if law permits the plaintiffs to make such an application to the Government

or any authority for allotment/allocation of the land, then, they would always be free to make such application. Consequently, Civil Application No.4842 of 2005 is disposed of. Notice is discharged. No costs.

[R.S.Garg, J.]

*kamlesh**